IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1335 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHARTIBEN SHAILENDRAKUMAR DAS - Petitioner(s)

Versus

COLLECTOR OF STAMPS - Respondent(s)

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Appearance :

MR MA BUKHARI for Petitioner(s) : 1,
MR HM PRACHCHHAK ASST GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/02/2006

ORAL JUDGMENT

1. Rule. Shri H.M.Prachchhak, learned AGP waives service of rule on behalf of the respondent. With the consent of the learned advocates for the

parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Collector of Stamps, Ahmedabad dated 30.9.2004 passed under Section-32-A of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.58,605/- and Rs.250/- by way of penalty in all Rs.58,855/- with respect to the document registration No.674 dated 20.2.1996 presented before the Sub-Registrar, Paladi.

3. It is the contention on behalf of the petitioner that neither any notice under Rule-4 of the Rules, nor the impugned order was served upon the petitioner and the order has been passed without giving any opportunity to the petitioner. Shri Bukhari, learned advocate for the petitioner

has also tried to submit the case on merits by submitting that even the impugned order is a cyclostyled order and as such, no reasons have been assigned to fix the market value of the property in question at Rs.9,31,400/- and therefore, it is requested to allow the present special civil application and to remand the matter to the Collector of Stamps, Ahmedabad.

4. In response to the notice issued by this Court, Shri H.M.Prachchhak, learned AGP appears and has submitted that notice as well as the order was sent to the petitioner at the address which was mentioned in the document, however, due to incomplete address, notice and order was returned unserved. In view of the above and without going into the legality and validity of the impugned order on merits, only on that ground that the impugned order has been passed without giving any opportunity to the petitioner, the same is in breach of principle of natural

justice, the present special civil application is required to be allowed and the matter requires to be remanded to the Collector of Stamps, Ahmedabad for taking into consideration said aspects and to pass an appropriate order afresh in accordance with law and on merits after giving any opportunity to the petitioner. Shri Bukhari, learned advocate for the petitioner has also submitted that no fresh notice be served upon the petitioner and the petitioner will appear before the respondents on 6.3.2006 for making submissions at the first instance and thereafter, the next date of hearing can be fixed by the respondents if so requires.

5. For the reasons stated above, the petition succeeds in part. The impugned order passed by the Collector of Stamps, Ahmedabad dated 30.9.2004 is hereby quashed and set aside and the matter is remanded to the Collector of Stamps, Ahmedabad for passing an appropriate order in

accordance with law and on merits and the petitioner will appear before the Collector of Stamps, Ahmedabad on 6.3.2006 as agreed by the learned advocate appearing on behalf of the petitioner and it is also agreed that no further notice will be served upon the petitioner and this itself be treated as notice of hearing to the petitioner. It is, however, made clear that this Court has not expressed any opinion on merits of the matter, and the impugned order is set aside only on the ground that as the notice and the impugned order was not served, the same was in breach of principle of natural justice.

6. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

Direct Service is permitted.

[M.R.Shah, J.]

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